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Paper No. 22

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OFFICE OF PETITIONS

In re Application of :
Gary W. Lampkins : DECISION ON PETITION
Application No. 10/046,164 :
Filed: 16 January, 2002 :
For: STAY TIE II :
:

This is a decision on the renewed petition filed on 28 August, 2006, under 37 CFR 1.137(b).¹

The petition is **GRANTED**.

This application became abandoned on 16 October, 2003, for failure to file a proper reply to the Notice of Non-Compliant Amendment (37 CFR 1.121), mailed on 15 August, 2003, which set a one (1) month shortened period for reply. On 15 September, 2003,

¹ Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition filed under the provisions of 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional application filed on or after June 8, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continued examination in compliance with § 1.114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof. In an application abandoned for failure to pay the publication fee, the required reply must include payment of the publication fee.

(2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c)).

petitioner filed an amendment. However, the examiner determined by letter mailed on 8 October, 2003, that the amendment was not compliant with 37 CFR 1.121(c), and stated that the time for reply continued to run from the Notice mailed on 15 August, 2003. No extensions of the time for reply in accordance with 37 CFR 1.136(a) were obtained. Notice of Abandonment was mailed on 16 April, 2004. The petition filed on 24 August, 2005, was dismissed on 29 September, 2005. The renewed petition filed on 17 October, 2005, was dismissed on 7 December, 2005. The renewed petition filed on 7 February, 2006, was dismissed on 6 March, 2006. The renewed petition is filed on 5 May, 2006, was dismissed on 28 June, 2006.

Receipt of the amendment filed with the present petition is acknowledged.

In this regard it is noted that the revival of the application should not be construed as meaning that this amendment has been determined to be in compliance with 37 CFR 1.121. The examiner will determine, in due course, whether the amendment is a proper amendment within the meaning of 37 CFR 1.121.

The application is being forwarded to Technology Center Art Unit 3728 for further processing.

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3231.

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